

TOWN OF NEEDHAM
AMERICANS WITH DISABILITIES ACT AND EMPLOYMENT
AA/EEO #203

I. PURPOSE AND SCOPE

The purpose of this document is to outline the regulations contained in the U.S. Americans with Disabilities Act of 1990 which relate to employment in the Town of Needham.

II. APPLICABILITY

This policy applies to all employees of the Town of Needham excluding those employees under the supervision and control of the School Committee.

III. DEFINITIONS

Qualified Individuals with Disabilities – an individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a particular job.

Individuals with Disabilities – an individual who has a physical or mental impairment that substantially limits one or more of his/her major life activities; or who has a record of such an impairment; or who is regarded as having such an impairment. An individual who currently uses drugs illegally is not considered to be an individual with a disability.

Major Life Activities – activities that an average person can perform with little or no difficulty, such as walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, or working.

Reasonable Accommodation – a modification or adjustment to a job, employment practice, or work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity.

Undue Hardship – an action that is excessively costly, extensive, substantial or disruptive, or that would fundamentally alter the nature or operations of the Town.

IV. POLICY

The Town of Needham will not discriminate against people with disabilities in any employment practices or in terms, conditions or privileges of employment, including, but not limited to: application, testing, hiring, assignment, evaluation, disciplinary action, training, promotion, medical examination, layoff/recall, termination, compensation, leaves or benefits.

The Town of Needham will make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless such action would cause an undue hardship to the operations of the Town.

V. PROCEDURES FOR ESTABLISHING STANDARDS

The Town of Needham has and will continue to establish bona fide occupational qualifications for each position, including the education, skills, and work experience required, and the physical, mental and environmental standards necessary for job performance, health, and safety. Such standards are job-related and consistent with business necessity.

VI. REASONABLE ACCOMMODATION PROCEDURES

- A.** The Town of Needham will provide reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee unless such accommodation will impose undue hardship on the Town. The Town will provide reasonable accommodation to ensure equal employment opportunity in the application process; to enable a qualified individual with a disability to perform the essential functions of the job; and to enable an employee with a disability to enjoy equal benefits and privileges of employment.
- B.** The Town need not provide reasonable accommodation for an individual who is otherwise not qualified for a position.
- C.** The duty to provide reasonable accommodation is on-going, and may arise any time that an employee's job changes.
- D.** It is the obligation of the individual with the disability to request the accommodation.
- E.** If the cost of providing the accommodation is determined to meet the criteria of undue hardship on the Town, the affected individual will be offered the opportunity to provide the accommodation or partial accommodation him or herself.
- F.** Some examples of reasonable accommodation include, but are not limited to, the

following:

1. making facilities readily accessible and usable;
2. restructuring a job by reallocating or distributing marginal job functions;
3. altering when or how an essential job function is performed;
4. creating part-time or flexible schedules;
5. obtaining or modifying equipment or devices;
6. providing qualified readers or interpreters;
7. permitting the use of accrued or unpaid leave for treatment; and
8. providing reserved parking.

G. When attempting to identify what is a reasonable accommodation, appointing authorities and department managers should do the following:

1. Examine the particular job involved, determining its purpose and its essential functions.
2. Consult with the individual with the disability to find out his or her specific physical or mental abilities and limitations.
3. In consultation with the individual, identify potential accommodations and assess how effective each would be.
4. If an individual requests an accommodation which the appointing authority or department head considers to be unnecessary, the department head may ask for written documentation from a physician or other professional with knowledge of the individual's functional limitations.
5. The determination that any reasonable accommodation represents an undue hardship will be made by the Town Administrator or his/her designee.

VII. NON-DISCRIMINATION IN THE HIRING PROCESS

- A. Job Advertisements and Notices** Recruitment information should highlight the essential functions of the job.
- B. Accessibility of Job Information** Information about job openings should be accessible to people with different types of disability. The Town is not obligated to provide written information in alternative formats in advance, but should make such available upon request.
- C. Recruitment** Consistent with the purpose of the ADA, the Town will continue to extend its outreach to include sources of candidates with disabilities.
- D. Pre-employment Inquiries**

1. The ADA prohibits any pre-employment inquiries about an applicant's disability. This prohibition does not prevent an employer from obtaining necessary information regarding an applicant's qualifications, including medical information necessary to assess such qualifications and to ensure health and safety on the job.
2. Before making a job offer, the Town **may ask** questions about an applicant's ability to perform specific job functions and may make a job offer than is conditioned on satisfactory results of a post-offer medical examination or inquiry. The Town **may not** make inquiries about specific disabilities.
3. Questions which **may not** be asked during a pre-employment interview include (but are not limited to):
 - a. Have you ever had, or been treated for any of the following conditions?
 - b. Please list any conditions or diseases for which you have been treated in the past three years.
 - c. Have you ever been hospitalized? If so, for what conditions?
 - d. Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
 - e. Have you ever been treated for any mental condition?
 - f. How many days were you absent from work because of illness last year?
 - g. Do you have any disabilities or impairments which may affect your performance in the position?
 - h. Are you taking any prescription drugs?
 - i. Have you ever been treated for drug addiction or alcoholism?
 - j. Have you ever filed a workers' compensation claim?
4. **Grievance Procedure** All applicants for employment will be given a handout describing the Town's ADA Employment Grievance Procedure (See Attachment B)
5. **Reference Checks** Department managers may not request information about a job applicant from a previous employer or other reference provider that they may not request of the job applicant him or herself. For example, the hiring manager **may not** ask the reference provider about an applicant's:
 - a. disability;
 - b. illness;
 - c. worker's compensation history; or
 - d. any other question listed in Section 3.

The employer **may** ask about:

- a. job functions and tasks performed by the applicant;
- b. the quality and quantity of work performed;
- c. how job functions were performed;
- d. attendance record; and/or
- e. other job-related issues that do not relate to a disability.

E. Health and Safety Considerations

Even if the applicant is qualified to perform the job, the Town may deny employment if such employment would pose a direct threat to the health and safety of the individual or others, if such threat cannot be eliminated through reasonable accommodation. Such determination must be made by the Town Administrator or his/her designee after careful review of the circumstances.

VIII. NON-DISCRIMINATION IN OTHER EMPLOYMENT PRACTICES

- A. Opportunity for Advancement** The non-discrimination requirements that apply to initial selection also apply to all aspects of employment, including opportunities for advancement. As a result, current employees applying for promotions may not be discriminated against based upon disability.
- B. Training** Employees with disabilities will be provided equal opportunity to participate in training to improve job performance, and will be provided opportunities for advancement. Training opportunities will not be denied because of the need to make a reasonable accommodation unless the accommodation would create an undue hardship for the Town.
- C. Evaluation, Discipline, Discharge** The Town will hold employees with disabilities to the same standards of performance as other, similarly situated
- D. Compensation** The Town will not reduce the pay of an employee with a disability because of the elimination of a marginal job function, or because it has provided a reasonable accommodation at its expense. However, an employee who is reassigned to a lower paying job may be paid the lower amount, consistent with Town policy.
- E. Health Insurance/Employee Benefits** The Town will provide the same coverage to its employees regardless of disability.
- F. Leaves** The Town will not refuse to grant a leave to an employee with a disability if other employees are granted comparable types of leave.

- G. **Collective Bargaining Agreements** The Town may not do anything through a contractual relationship that it cannot do directly.

IX. DRUG AND ALCOHOL ABUSE

- A. **Illegal Use of Drugs** The Town will discharge or deny employment to current illegal users of drugs, in accordance with existing policy.
- B. **Alcoholism** An employee who is an alcoholic is considered to be a person with a disability under the terms of the ADA. However, the Town may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that he or she is “not qualified” for the position.
- C. **Recovering Addicts** Persons addicted to drugs, but who are no longer using drugs illegally and who are receiving treatment for drug addiction, or who have been rehabilitated successfully, are protected from discrimination by the ADA.
- D. **Pre-employment Inquiries** The Town may ask questions regarding the use of alcohol or illegal use of drugs. However, the employer **may not** ask whether the applicant is a drug addict or alcoholic, or whether he/she has ever been in a drug or alcohol rehabilitation program.

X. GRIEVANCE PROCEDURE

- A. The Town has developed an ADA employment grievance procedure. The purpose of this procedure is to encourage local resolution of grievance concerning employment. It is important to note that grievants are not required to exhaust the Town’s procedures prior to filing a state or federal complaint or taking court action.
- B. Anyone who feels that he or she has been discriminated against by the Town of Needham on the basis of disability in employment practices may file a grievance.
- C. The grievance should be in writing and should contain information about the alleged discrimination such as name, address, phone number of grievant and location, date and description of the problem. Reasonable accommodation, such as personal interviews or a tape recording of the complaint will be made available for persons with disabilities who are unable to submit a written complaint.
- D. The grievant should first attempt to resolve the grievance at the level of the department manager. The department manager will notify the Personnel Director if such a grievance is submitted.
- E. If the grievance is not resolved to the satisfaction of the grievant, or if the

department manager lacks authority or jurisdiction to correct the problem, the grievance should be submitted by the grievant and or his/her designee as soon as possible to:

Personnel Director
Town Hall
Needham, MA 02492
781-455-7530

- F.** Within 15 calendar days after receipt of the grievance, the Personnel Director will meet with the grievant to discuss the grievance and possible resolutions. Within fifteen (15) calendar days after the meeting, the Personnel Director will respond to the grievant in writing, or, where appropriate, in a format accessible such as audiotape. The response will explain the position of the Town of Needham and may offer options for substantive resolution of the grievance.
- G.** If the response by the Personnel Director does not satisfactory resolve the issue, the grievant or his or her designee may appeal the decision of the Personnel Director to the Board of Selectmen by filing a written appeal within fifteen (15) days of receipt of the decision of the Personnel Director.
- H.** Within fifteen (15) days of receipt of the appeal, the Board of Selectmen or its designee will meet with the grievant to discuss the grievance and possible resolutions. Within fifteen days after the meeting with the Board of Selectmen or its designee, the Board or its designee will respond in writing, or, where appropriate, in a format accessible to the grievant, with a final resolution of the grievance.
- I.** All grievances received by the Personnel Director, appeals to the Board of Selectmen or its designee, and responses from same, will be kept by the Town of Needham for at least three (3) years. Such documents will remain strictly confidential.
- J.** This grievance procedure is meant to be informal, and cannot be legally binding on either party. Any grievance or complaint involving existing or threatened civil or criminal litigation may not be addressed using this informal procedure.

Effective Date: December 13, 1995

ATTACHMENT A

ADA Compliance Officer

Kate Fitzpatrick
Town Administrator
Town Hall
1471 Highland Avenue
Needham, MA 02492
781-455-7512

ADA Employment Questions

Russell J. Dean
Assistant Town Administrator/Personnel Director
Town Hall
1471 Highland Avenue
Needham, MA 02492
781-455-7530

Massachusetts Commission Against Discrimination

MCAD
One Ashburton Place
Boston, MA 02108
617-727-3900

United States Equal Employment Opportunity Commission

EEOC Boston Office
One Congress Street 10th Floor
Boston, MA 02114
617-565-3200

ATTACHMENT B

HANDOUT FOR EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

The Town of Needham has developed an ADA employment grievance procedure. The purpose of the procedure is to encourage local resolution of grievances concerning employment. It is important to note that grievants are not required to exhaust the Town's procedures prior to filing a state or federal complaint or taking court action.

Anyone who feels that he or she has been discriminated against by the Town of Needham on the basis of disability in employment practices may file a grievance.

The grievance should be in writing and should contain information about the alleged discrimination such as name, address, and phone number of grievant, as well as location, date and description of the problem. Reasonable accommodation, such as personal interviews or a tape recording of the grievance will be made available for persons with disabilities who are unable to submit a written grievance.

The grievance should be submitted by the grievant or his/her designee as soon as possible to:

Personnel Director
Town Hall
1471 Highland Avenue
Needham, MA 02492

Within 15 calendar days after receipt of the grievance, the Personnel Director will meet with the grievant to discuss the grievance and possible resolutions. Within fifteen (15) calendar days after the meeting, the Personnel Director will respond to the grievant in writing, or, where appropriate, in a format accessible to the grievant such as audiotape. The response will explain the position of the Town of Needham and may offer options for substantive resolution of the complaint.

If the response by the Personnel Director does not satisfactorily resolve this issue, the grievant or his or her designee may appeal the decision of the Personnel Director to the Board of Selectmen by filing a written appeal within fifteen (15) days of receipt of the decision of the Personnel Director.

Within fifteen (15) days of receipt of the appeal, the Board of Selectmen or its designee will meet with the grievant to discuss the grievance and possible resolutions. Within fifteen days after the meeting with the Board of Selectmen or its designee, the Board or its designee will respond in writing, or, where appropriate, in a format accessible to the grievant, with a final resolution of the grievance.

All grievances received by the Personnel Director, appeals to the Board of Selectmen or its designee, and responses from same, will be kept by the Town of Needham for at least three (3) years. Such documents will remain strictly confidential.

**Town of Needham
Policy Statement Concerning
Access to Programs, Services, and Activities
In Accordance with the
Americans with Disabilities Act of 1990**

Issued: _____
Date

Chairman, Board of Selectmen

POLICY

All programs, services, and activities provided or made available by the Town of Needham through its departments, boards or commissions will be accessible to persons with disabilities, in accordance with the provisions of the ADA.

DEFINITIONS

Individuals with Disabilities –an individual who has a physical or mental impairment that substantially limits one or more of his/her major life activities; or who has a record of such an impairment; or who is regarded as having such an impairment. Individuals who currently use illegal drugs are not considered to be individuals with disabilities.

Major Life Activities – activities that an average person can perform with little or no difficulty, such as walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, or working.

PROCEDURES

A. **Access**

1. The Town must ensure that individuals with disabilities are not excluded from services because buildings are inaccessible.
2. The Town may make programs accessible by moving them to an existing, accessible facility, or through alternative methods, such as:
 - a. relocating services to accessible places;
 - b. providing aides or assistants (e.g. interpreters); or
 - c. providing services at home.
3. Access to buildings and/or programs may not be achieved by physically lifting or carrying an individual except in manifestly exceptional circumstances.

B. Participation

1. The Town may not unreasonably refuse to allow a person with a disability to participate in a program, service, or activity because of disability.
2. The Town must eliminate unnecessary eligibility standards which result in denial of equal opportunity to persons with disabilities.
3. The Town is required to modify policies, practices and procedures that tend to deny equal access unless fundamental alteration of programs would result.
4. The Town must furnish auxiliary aids and services to ensure effective communication.
5. The Town may not require special charges to cover the costs of providing non-discriminatory treatment.

C. Integration

1. Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the ADA.
2. The Town may not provide services or benefits to individuals with disabilities through separate or different programs, unless that separation is necessary to ensure that benefits and services are equally effective.
3. When separate programs are permitted, an individual with a disability has the right to choose to participate in the regular program.
4. The Town may not require an individual with a disability to accept a special accommodation if he/she chooses not to accept it.

D. Grievance Procedure

1. The Town has developed an ADA grievance procedure. The purpose of this procedure is to encourage local resolution of grievances concerning services, programs, and activities. It is important to note that grievants are not required to exhaust the Town's procedures prior to filing a state or federal complaint or taking court action.
2. Anyone who feels that he or she has been discriminated against by the Town of Needham on the Basis of disability may file a grievance.
3. The grievance should be in writing and should contain information about the alleged

discrimination such as name, address, phone number of grievant and location, date and description of the problem. Reasonable accommodation, such as personal interviews or a tape recording of the grievance will be made available for persons with disabilities who are unable to submit a written grievance.

4. The grievant should first attempt to resolve the grievance at the level of the department exercising jurisdiction, that is, with responsibility for the activity, program or service at issue. This grievance should be submitted to the department head.
5. If the grievance is not resolved to the satisfaction of the grievant, or if the department head lacks the jurisdiction or authority to resolve the grievance, the grievance should be submitted by the grievant and or his/her designee as soon as possible to:

ADA Compliance Officer
Town Administrator's Officer
Town Hall
Needham, MA 02492
781-455-7530

6. Within 15 calendar days after receipt of the complaint, the Town Administrator will meet with the grievant to discuss the grievance and possible resolutions. Within fifteen (15) calendar days after the meeting, the Town Administrator will respond to the grievant in writing, or, where appropriate, in a format accessible to the grievant such as audiotape. The response will explain the position of the Town of Needham and may offer options for substantive resolution of the grievance.
7. If the response by the Town Administrator does not satisfactorily resolve the issue, the grievant or his or her designee may appeal the decision of the Town Administrator to the Board of Selectmen by filing a written appeal within fifteen (15) days of receipt of the decision of the Town Administrator.
8. Within fifteen (15) days of receipt of the appeal, the Board of Selectmen will meet with the grievant to discuss the grievance and possible resolution. Within fifteen days after the meeting with the Board of Selectmen, the Board or its designee will respond in writing, or, where appropriate, in a format accessible to the grievant, with a final resolution of the grievance.
9. All grievances received by the Town Administrator, appeals to the Board of Selectmen, and responses from same, will be kept by the Town of Needham for at least three (3) years. Such documents will remain strictly confidential.
10. This grievance procedure is meant to be informal, and cannot be legally binding on either party. A grievance involving existing or threatened civil or criminal litigation may not be addressed by this policy.

